

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS PARRY,	)	
	)	Civil Action No. 2: 11-cv-1318
Petitioner,	)	
	)	Judge Nora Barry Fischer
v.	)	
	)	
SUPERINTENDENT KERESTES, <i>et al.</i> ,	)	
Respondents.	)	

**MEMORANDUM ORDER**

By Memorandum Order of November 12, 2013, Magistrate Judge Cynthia Reed Eddy granted Petitioner's request for an Order, pursuant to Federal Rule of Civil Procedure 62.1, indicating that the Court would vacate its Memorandum Opinion and Order of October 26, 2012, which had conditionally granted Petitioner's Amended Petition for Writ of Habeas Corpus to allow Petitioner to pursue his direct appeal rights *nunc pro tunc*, if the United States Court of Appeals for the Third Circuit remanded the then-currently pending appeal from that Order back to this Court. (ECF No. 35.) Thereafter, on December 23, 2013, the Court of Appeals issued its Mandate remanding the case to the district court for further proceedings.

By Order of May 6, 2014, the magistrate judge granted Petitioner's Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b). The magistrate judge found that its Memorandum Opinion and Order of October 26, 2012, had been improvidently entered and as such was void and should be vacated. (ECF No. 51.) By Text Order of May 6, 2014, the Memorandum Opinion and Order was vacated, which effectively revived the Amended Petition for habeas relief. At that time, the case was assigned to this member of the Court as the presiding judge.

Contemporaneously with these Orders, the Magistrate Judge also issued a Report and Recommendation (ECF No. 52) in which it was recommended that, for the reasons stated in the Memorandum Opinion and Order of October 26, 2012, as supplemented by the Report and Recommendation, the Amended Petition for Writ of Habeas Corpus should be granted to allow Petitioner to pursue his direct appeal rights *nunc pro tunc*. It was also recommended that because any discussion on Petitioner's ineffective assistance of counsel claims was premature, those claims should be stayed pending conclusion of Petitioner's state court proceedings.

Petitioner, through counsel, was served with the Report and Recommendation and was advised that he had until May 20, 2014, to file written objections to the Report and Recommendation. To date, no objections have been filed nor have any requests for an extension to file objections been filed.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

**AND NOW**, this 23rd day of May, 2014:

**IT IS HEREBY ORDERED** that the Amended Petition for Writ of Habeas Corpus is **CONDITIONALLY GRANTED** to allow Petitioner to continue to pursue his direct appeal rights *nunc pro tunc*.

It is further **ORDERED** that litigation in this habeas corpus proceeding on Counts 4 through 7 of the Amended Petition is **STAYED** pending conclusion of Petitioner's state court proceedings. It is further **ORDERED** that Petitioner shall notify the Court of the disposition of his state court proceedings within thirty (30) days of the final disposition of those proceedings.

**IT IS FURTHER ORDERED** that a certificate of appealability is not issued because Petitioner has been granted conditional relief on his direct appeal claims and the remainder of his claims are stayed pending conclusion of his state court proceedings.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. [52]) is **ADOPTED** as the Opinion of the Court.

*s/ Nora Barry Fischer*  
Nora Barry Fischer  
United States District Judge

cc: Elisa A. Long  
Federal Public Defender's Office  
Email: Elisa\_Long@fd.org

Jacquelyn A. Knupp  
Westmoreland County District Attorney's Office  
Email: jknupp@co.westmoreland.pa.us